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Honorable Karen A. Overstreet  
Chapter : 11

Hearing Location: 700 Stewart St.  
Room 7206  
Seattle, WA

Hearing Time: As determined by Court  
(shortened time requested)

Hearing Date: As determined by Court  
(shortened time requested)

8 UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 In re:

11 COAST CRANE COMPANY,

12 Debtor.

No. Case No. 10-21229-KAO

EMERGENCY MOTION FOR  
INTERIM FINANCING ORDER:

13 (1) AUTHORIZING POST-PETITION  
14 SECURED FINANCING,

15 (2) AUTHORIZING DEBTOR'S USE  
OF CASH COLLATERAL AND  
16 GRANTING ADEQUATE  
PROTECTION;

17 (3) GRANTING LIENS AND SUPER  
18 PRIORITY CLAIMS; AND

19 (4) SCHEDULING A FINAL HEARING

20  
21 Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364, Fed. R. Bankr. P. ("FRBP") 2002,  
22 4001 and 9014, and Local Bankruptcy Rule 4001-1 and -2, debtor-in-possession Coast Crane  
23 Company ("**Debtor**") moves the Court for entry of interim and final orders (i) authorizing Debtor to  
24 enter into the postpetition financing agreement described below, (ii) authorizing Debtor's of use cash  
25 collateral pursuant to a budget and the postpetition financing agreement, (iii) authorizing Debtor to  
26

1 grant adequate protection, (iv) granting liens and super-priority claims and (v) scheduling a final  
2 hearing on this motion. This motion is based upon the files and records herein and the supporting  
3 Declarations of Tom Neary and Matthew W. Hudson filed herewith. In support of this motion,  
4 Debtor respectfully represents as follows:

## 5 **I. JURISDICTION AND VENUE**

6 This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This motion describes  
7 core proceedings within the meaning of 28 U.S.C. § 157(b)(2)(A), (D), (G) and (M). Venue is  
8 proper under 28 U.S.C. § 1408.

## 9 **II. FACTUAL BACKGROUND**

### 10 **A. Debtor's Business.**

11 Debtor is in the business of leasing, selling and servicing tower cranes, forklifts, hoists,  
12 elevators, boom lifts, scissor lifts and other heavy equipment used in commercial construction  
13 throughout the world. Debtor is a Delaware corporation with locations throughout the United States  
14 and Canada including its principal place of business in Seattle. Debtor's business was established in  
15 1970 and has approximately 167 employees (including 158 U.S. employees). Debtor filed a  
16 voluntary Chapter 11 petition on September 22, 2010 (the "***Petition Date***") and has since been  
17 operating its business and managing its affairs as a debtor-in-possession pursuant to 11 U.S.C. §§  
18 1107 and 1108.

### 19 **B. Financial Status of Debtor.**

20 Debtor has very little in the way of liquid assets and minimal cash. As set for in Debtor's  
21 Bankruptcy Schedules, Debtor owes approximately \$90.5 million in indebtedness secured by  
22 security interests in substantially all of its assets, \$6.9 million in indebtedness secured by purchase  
23 money security interests in favor of certain inventory suppliers and \$2.2 million in unsecured  
24 indebtedness to various trade creditors, vendors, suppliers and other parties. In addition, as of the  
25 Petition Date, Debtor owed approximately \$220,000 in employee benefits and wages due for the  
26

1 payroll period ending September 22, 2010 and will have approximately \$150,000 in lease  
2 obligations coming due by October 1, 2010. Debtor is in default under various agreements  
3 evidencing these debts and has no present ability to service its debts absent the relief requested in  
4 this motion.

5 **C. Description of Prepetition Indebtedness.**

6 Debtor has the following general categories of prepetition secured<sup>1</sup> and unsecured debt, more  
7 fully described as follows:

8 *1. Senior Secured Indebtedness*

9 a. Lenders and Description of Indebtedness. PNC Bank, National Association (in its  
10 individual capacity as one of the Prepetition Lenders identified herein and as administrative and  
11 collateral agent ("***Prepetition Agent***") for the Prepetition Lenders), Wells Fargo Bank, N.A. and  
12 Colonial Pacific Leasing Corporation (by way of assignment from other parties and collectively, the  
13 "***Prepetition Lenders***") are Debtor's largest prepetition secured creditors under a Revolving Credit  
14 and Security Agreement dated May 18, 2007 (as amended, the "***Prepetition Senior Credit***  
15 ***Agreement***"). As of the Petition Date, the total indebtedness under the Prepetition Senior Credit  
16 Agreement was approximately \$75.5 million, plus accrued and unpaid interest, fees and expenses  
17 due and owing thereunder (the "***Prepetition Senior Indebtedness***"). A true and correct copy of the  
18 Prepetition Senior Credit Agreement is attached to the Declaration of Tom Neary (Debtor's Chief  
19 Operating and Financial Officer) filed herewith (the "***Neary Declaration***").

20 b. Guaranty. Debtor's affiliate NCA Crane Parent, Inc. ("***Guarantor***") is identified in  
21 the Prepetition Senior Credit Agreement as the guarantor of Debtor's obligations thereunder.

22  
23 \_\_\_\_\_  
24 <sup>1</sup> Attached to the Neary Declaration is a copy of Debtor's UCC search results from searches  
25 conducted June 2, 2010. The search results evidence the various security interests described herein.  
26 Except as otherwise stated in this Motion and the pleadings filed in support of this Motion, Debtor  
neither concedes nor disputes the rank, priority or validity of any purported security interest  
disclosed by the search results.

c      Collateral. Pursuant to the Prepetition Senior Credit Agreement, Debtor and Guarantor granted Prepetition Agent, on behalf of itself and for the benefit of Prepetition Lenders, liens and security interests (the “***Prepetition Senior Security Interests***”) in substantially all of their assets and the proceeds and products thereof (the “***Prepetition Collateral***”), subject to certain Permitted Encumbrances as defined in the Prepetition Senior Credit Agreement as security for the performance of their respective obligations under the Prepetition Senior Credit Agreement.

d Forbearance Agreement. Debtor, Guarantor and Prepetition Lenders entered into a Forbearance Agreement dated April 7, 2010 (as amended, the “*Forbearance Agreement*”) which describes certain Material Events of Default under the Prepetition Senior Credit Agreement. The forbearance period under the Forbearance Agreement (as amended) has expired. A true and correct copy of the Forbearance Agreement is attached to the Neary Declaration.

## 2. Junior Secured Indebtedness

a. Lender and Description of Indebtedness. Knott Partners, L.P. (“***Knott***”), as successor in interest to JPM Mezzanine Capital, LLC, is Debtor’s second largest prepetition secured creditor under a Term Loan and Security Agreement dated May 18, 2007 (as amended, the “***Junior Lender Term Loan Agreement***”). As of the Petition Date, the total indebtedness under the Junior Lender Term Loan Agreement was approximately \$15.0 million (the “***Prepetition Junior Indebtedness***”). A true and correct copy of the Junior Lender Term Loan Agreement is attached to the Neary Declaration.

b. Guaranty. Guarantor is identified in the Junior Lender Term Loan Agreement as the guarantor of Debtor's obligations thereunder.

c. Collateral. Pursuant to the Junior Lender Term Loan Agreement, Debtor and Guarantor granted a blanket security interest in the Prepetition Collateral (also subject to certain Permitted Encumbrances) as security for their respective obligations under the Junior Lender Term Loan Agreement.

1 d. Intercreditor Agreement. The respective rights and obligations of the Prepetition  
2 Lenders and Knott are set forth in that certain Intercreditor and Subordination Agreement dated May  
3 18, 2007 (as amended, the “*Intercreditor Agreement*”). A true and correct copy of the Intercreditor  
4 Agreement is attached to the Neary Declaration.

5 *3. Purchase Money Indebtedness*

6 Debtor has granted certain purchase-money security interests, more particularly described as  
7 follows:

8 a. DLL. On June 25, 2009, Debtor entered into an Agreement for Inventory Financing  
9 (the “*DLL Agreement*”) with De Lage Landen Financial Services (“*DLL*”). Under the DLL  
10 Agreement, DLL extended a Postpetition Indebtedness to Debtor and Debtor granted DLL a  
11 purchase money security interest in certain equipment and inventory (and the proceeds thereof)  
12 financed by DLL. As of the Petition Date, the total indebtedness under the DLL Agreement was  
13 approximately \$4.1 million.

14 b. Manitowoc/Grove. Manitowoc Crane Group<sup>2</sup> (“*Manitowoc*”) and Debtor are parties to that  
15 certain Distributor Sales and Service Agreement, dated July 19, 2007 (the “*Manitowoc Agreement*”),  
16 pursuant to which Debtor is appointed as a distributor of cranes, parts, and other equipment  
17 manufactured by Manitowoc (the “*Manitowoc Products*”) and pursuant to which Manitowoc sells the  
18 Manitowoc Products to Debtor. As of the Petition Date, the total indebtedness owed to Manitowoc  
19 was approximately \$2.8 million (the “*Manitowoc Indebtedness*”). Under a Security Agreement  
20 dated May 13, 2005 (the “*Manitowoc Security Agreement*”), Debtor’s obligations under the  
21 Manitowoc Agreement are secured by a purchase money security interest in all inventory, equipment,  
22 spare parts, and all other goods of every kind and description manufactured and/or sold by Manitowoc,  
23 and owned or acquired by Debtor, financed by Manitowoc, together with all existing and future  
24

25 \_\_\_\_\_  
26 <sup>2</sup> Manitowoc Crane Group consists of Manitowoc Cranes, Inc., Grove U.S., LLC, National Crane Corporation, Deutsche Grove GmbH, and Potain SAS.

1 attachments, accessions, accessories, replacements, substitutions, replacement parts and repairs therefor,  
2 incorporated therein, attached or affixed thereto, and/or used in connection therewith, and all cash and  
3 non-cash proceeds thereof (the “*Manitowoc Collateral*”), provided, however, that the Manitowoc  
4 Collateral is limited to those goods for which Manitowoc has not been paid in full. True and correct  
5 copies of the Manitowoc Agreement and the Manitowoc Security Agreement are attached to the  
6 Neary Declaration.

7 c. Other Purchase Money Security Interests. As set forth in Debtor’s Bankruptcy Schedules,  
8 Debtor has granted purchase money security interests in various other assets to secure approximately  
9 \$30,000 in total indebtedness.

#### 10 4. *Canadian Loan Facility*

11 a. Lender and Description of Indebtedness. Debtor and Guarantor are both guarantors of the  
12 obligations of Coast Crane Ltd., a British Columbia corporation (“*Canadian Affiliate*”) under a  
13 Revolving Credit Agreement dated August 17, 2007 (the “*Canadian Revolver*”). GE Canada  
14 Equipment Financing G.P., as successor-in-interest to Citicapital Commercial Corporation is the  
15 lender under the Canadian Revolver. As of the Petition Date, the total indebtedness under the  
16 Canadian Revolver was approximately \$2.8 million. A true and correct copy of the Canadian  
17 Revolver is attached to the Neary Declaration.

#### 18 5. *Unsecured Non-priority Indebtedness*

19 Debtor owes approximately \$2.2 million in unsecured non-priority debt to various vendors  
20 and supplies.

#### 21 6. *Interest Rate Swap Indebtedness*

22 Debtor owes approximately \$3.6 million in derivative interest payable (\$1.8 million to each  
23 PNC Bank and Citibank, N.A.) under separate interest rate swap agreements.

#### 24 D. Debtor’s Unexpired Real Property Leases.

25 Debtor is the tenant under unexpired real property leases at the following locations:  
26

<u>Location</u>	<u>Approximate Monthly Rent</u>
Portland	\$ 16,500
West Sacramento Office	\$ 15,000
West Sacramento Storage	\$ 1,597
City of Industry	\$ 12,395
San Leandro	\$ 20,225
Bakersfield	\$ 5,600
Seattle	\$ 17,500
Seattle - TC	\$ 8,500
Seattle -sales trailer	\$ 1,025
Seattle - TC trailer	\$ 850
Tacoma	\$ 4,000
Spokane	\$ 6,000
Pasco	\$ 3,500
Anchorage	\$ 11,000
San Diego	\$ 7,878
Ontario	\$ 7,957
Honolulu	\$ 11,855

Debtor is current on its unexpired real property leases, but will owe approximately \$150,000 for lease obligations coming due October 1, 2010.

### **III. NEED FOR POST-PETITION FINANCING AND USE OF CASH COLLATERAL**

Debtor is in immediate need of cash to pay ongoing payroll expenses, lease obligations, taxes and other operational expenses. It is essential that Debtor continue to meet its lease and payroll obligations and fund its daily operating costs, as its failure to do so would jeopardize its ongoing operations and impair the value of its assets as a going concern. The value of Debtor's assets is, to a large degree, dependent upon the buyer's ability to retain Debtor's employees and maintain valuable customer relationships.

Debtor is unable to obtain sufficient levels of unsecured credit allowable under 11 U.S.C. § 503(b)(1), has no further credit availability under the Prepetition Senior Credit Agreement or the Junior Term Loan Agreement and does not have sufficient working capital resources to continue its business without immediate additional financing. Further, Debtor is unable to obtain secured credit allowable only under 11 U.S.C. §§ 364(c), except under the terms and conditions provided in the

1 proposed Order filed herewith.

#### 2 **IV. RELIEF REQUESTED**

3 Debtor seeks entry of an order authorizing Debtor to (i) obtain interim postpetition financing  
4 pursuant to the DIP Facility Agreement (described below) pending a final hearing on approval of the  
5 DIP Facility Agreement pursuant to FRBP 4001(c)(2) and (ii) use cash collateral of Prepetition  
6 Lenders and Knott on the terms set forth herein.

##### 7 **A. Proposed Debtor-in-Possession Financing.**

8 1. Lender and Material Terms. Prepetition Lenders (collectively with such other lenders  
9 who from time to time may become lenders under the DIP Facility Agreement defined below, the  
10 “**DIP Lenders**”) are prepared to offer debtor-in-possession financing to Debtor pursuant to that  
11 certain Modifications to Revolving Credit and Security Agreement (the “**DIP Facility Agreement**”),  
12 which would provide up to \$20.0 million in postpetition credit to be used in a manner consistent with  
13 a proposed budget (the “**DIP Budget**”) including, pursuant to FRBP 4001(c)(2), emergency interim  
14 credit not to exceed the amounts set forth in the DIP Budget through the date of entry of a final order  
15 granting the relief requested by this Motion. Copies of the DIP Facility Agreement and the DIP  
16 Budget are attached to the Neary Declaration filed herewith.

17 Debtor believes the total amount of credit to be provided under the DIP Facility Agreement  
18 would be sufficient to allow it to meet its budgetary needs through early November, or until such  
19 time as a sale of Debtor’s assets could be approved and consummated under 11 U.S.C. § 363.  
20 Pursuant to FRBP 4001(c)(1)(B), the following are the material provisions of the DIP Facility  
21 Agreement:

22 a. DIP Lenders may advance up to an aggregate principal amount of \$20.0  
23 million (the “**DIP Facility Amount**”) on the terms set forth in the DIP Facility Agreement, as  
24 necessary to meet Debtor’s cash needs. The DIP Facility Amount, together with interest, fees and  
25 charges payable thereon is referred to as the “**Postpetition Indebtedness**”.



1           b.       Cash advances under the DIP Facility Agreement shall bear interest at the rate  
2 of 9.25% per annum (as of the Petition Date, but subject to variance as described therein). (§ 6).

3           c.       The Postpetition Indebtedness will mature on the earlier of (i) 60 days after  
4 the Petition Date, (ii) the effective date of Debtor's confirmed plan of reorganization under Chapter  
5 11, if any, or (iii) the closing date of a sale of substantially all of Debtor's assets pursuant to 11  
6 U.S.C § 363. (§ 11).

7           d.       As security for Debtor's obligations under the DIP Facility Agreement,  
8 Debtor will grant the DIP Agent, on behalf of itself and for the benefit of the DIP Lenders, (i)  
9 pursuant to 11 U.S.C. § 364(c)(1), a super-priority administrative claim with priority over any and  
10 all administrative expenses of the kind specified in 11 U.S.C. §§ 503(b) and 507(b) subject only to  
11 the payment in full of the Carveout (defined below) and, to the extent payable, the Purchaser Break-  
12 Up Fee and Expense Reimbursement described in the Asset Purchase Agreement attached as Exhibit  
13 J to the Neary Declaration (the "**APA**"), which super-priority administrative claim shall be payable  
14 from any unencumbered prepetition or postpetition property of the Debtor whether now existing or  
15 hereafter acquired and (ii) pursuant to 11 U.S.C. §§ 363 (c)(2)-(3) and (d)(1), first-priority security  
16 interests and liens (collectively, the "**DIP Facility Liens**") in and to all of Debtor's presently owned  
17 or hereafter acquired property and assets, subject only to (a) the Carveout, (b) the extent payable, the  
18 Purchaser Break-Up Fee and Expense Reimbursement described in the APA and (c) the Permitted  
19 Prior Liens (as defined in the proposed Interim Order filed herewith).

20           e.       The DIP Facility Liens and the super-priority claim granted under the DIP  
21 Facility Agreement will be subject to a carveout (the "**Carveout**") exclusively for the payment of  
22 allowed and unpaid reasonable professional fees and disbursements by professionals retained  
23 pursuant to 11 U.S.C. §§ 327, 328, 363 or 1103(a) by Debtor and any statutory committees  
24 appointed in Debtor's Chapter 11 case plus quarterly fees required to be paid pursuant to 28 U.S.C. §  
25 1930(a)(6) and fees payable to the Clerk of the Bankruptcy Court and any agent thereof (the  
26

1 “*Carveout Sums*”). The Carveout Sums may, to the extent there are not sufficient unencumbered  
2 funds available to Debtor’s estate, be paid from the proceeds of the DIP Lenders’ collateral in an  
3 aggregate amount not to exceed the amounts set forth in the DIP Budget plus up to \$25,000 for  
4 Carveout Sums accruing after the Carveout Trigger Date (as defined in the proposed Interim Order  
5 filed herewith). Any obligation of the DIP Lenders to fund or otherwise pay any amounts toward the  
6 Carveout shall be added to and made part of the Postpetition Indebtedness.

7 f. Events of the default under the DIP Facility Agreement include the following  
8 (§ 10.b):

- 9 -Appointment of a trustee or examiner for Debtor
- 10 -Change in Debtor’s management
- 11 -Conversion of this case to a case under Chapter 7
- 12 -Debtor’s failure to stay within the Approved Variances for sales and expenses
- 13 -Lack of entry of a Final Order approving the DIP facility within 30 days after entry  
14 of an Interim Approval Order
- 15 -Filing of a Chapter 11 Plan which adversely alters the DIP Lenders’ rights
- 16 -Debtor’s failure to obtain approval of its proposed bidding and sale procedures in  
connection with a sale of substantially all of its assets on or before November 5, 2010
- 17 -Debtor’s breach of the APA
- 18 -Termination of the APA for any reason other than as a result of an approval of a  
transaction other than the transaction contemplated by the APA

19 g. The Prepetition Agent (on behalf of the Prepetition Lenders) and the DIP  
20 Agent (on behalf of the DIP Lenders) will be permitted to credit bid the combined sum of the  
21 obligations due under the Prepetition Senior Credit Agreement and the DIP Facility Agreement, or  
22 any portion thereof, at any sale of Debtor’s assets including any sale conducted pursuant to 11  
23 U.S.C. § 363.

24 3. Collateral. Advances under the DIP Facility Agreement would be secured pursuant to  
25  
26

1 11 U.S.C. §§ 363 (c)(2) and 364(d)(1), with the DIP Facility Liens in and to all of Debtor's presently  
2 owned or hereafter acquired property and assets, subject to the Carveout, Prior Permitted Liens and,  
3 to the extent payable, Purchaser Break-Up Fee and Expense Reimbursement.

- 4 4. Loan Fees. The following loan fees apply to the DIP Facility Agreement: (§ 12):  
5 -Closing fee of 2.0% of the DIP Facility Amount (estimated to be \$400,000)  
6 -Exit fee of 0.5% of the combined amount of the Prepetition Senior Indebtedness and  
7 the balance owing on the DIP Facility Amount, payable on maturity or earlier default

8 **B. Proposed Use of Cash Collateral.**

9 Debtor seeks to use cash collateral, and proposes granting replacement liens and an  
10 administrative claim to the Prepetition Lenders as more fully set forth below.

11 **V. LEGAL DISCUSSION**

12 **A. Postpetition Financing.**

13 11 U.S.C. §§ 364(c) and (d) set forth the means by which a debtor-in-possession may obtain  
14 postpetition secured credit. To obtain credit under § 364(c)(1), (2) or (3), a debtor must be unable to  
15 obtain unsecured credit allowable under § 503(b)(1) as an administrative expense. To obtain credit  
16 under § 364(d), a debtor must be unable to otherwise obtain the credit and there must be adequate  
17 protection of the interest of the holder of the lien on any property of the estate on which a senior or  
18 equal lien is proposed to be granted.

19 Debtor made substantial prepetition efforts to obtain alternative credit, which are more fully  
20 described in the Declaration of Matthew H. Hudson of Oppenheimer & Co. Inc. ("**Oppenheimer**")  
21 filed herewith. In summary, since approximately March 2010 and with assistance from  
22 Oppenheimer, Debtor has been attempting to sell its assets or otherwise recapitalize itself.  
23 Oppenheimer solicited 140 parties in connection with those efforts. These efforts resulted in ten (10)  
24 written expressions of interest from parties interested in either (i) acquiring Debtor's assets, (ii)  
25 purchasing a significant equity interest in Debtor or (iii) entering into a financing transaction with  
26

Debtor. Three of the written proposals were financing proposals (the “*Financing Proposals*”). Each of the Financing Proposals included one or more of the following terms, which proved unacceptable to Debtor and its prepetition lenders:

- Subordination of the Prepetition Senior Indebtedness
- Subordination of the Prepetition Junior Indebtedness
- Principal write-down of the Prepetition Senior Indebtedness
- Principal write-down of the Prepetition Junior Indebtedness
- Equitization (or other recapitalization or conversion) of the Prepetition Junior Indebtedness
- Excessive interest payments/loan fees based on Debtor’s gross sales
- Freezing or limitations on the amount of the Prepetition Senior Indebtedness
- Interest rates as high as 20% per annum, but typically in excess of 12%
- Excessive loan fees and/or pre-payment penalties

Oppenheimer was also actively involved in the extensive prepetition negotiations with the Prepetition Lenders regarding the basis for any postpetition financing. Throughout this process, it became apparent that (i) Debtor would not be able to obtain unsecured financing or financing secured by liens junior to the liens of Prepetition Lenders, (ii) Prepetition Lenders are not willing to consent to Debtor obtaining third-party financing secured by liens which are senior to, or *pari passu* with, existing liens on Debtor’s assets and (iii) Prepetition Lenders will only agree to provide financing in the context of a chapter 11 debtor-in-possession loan facility on the terms set forth in the proposed DIP Facility Agreement. The DIP Facility Agreement is the result of several weeks of arm’s-length negotiations conducted in good faith among Debtor and the DIP Lenders, all of whom have been represented by counsel during such negotiations.

Debtor believes that the terms of the DIP Facility Agreement are fair and reasonable, that obtaining credit under the DIP Facility Agreement is necessary to preserve the value of Debtor’s assets and that entering into the DIP Facility Agreement is an exercise of Debtor’s sound and reasonable business judgment. Accordingly, the DIP Facility Agreement should be approved

1 pursuant to §§ 364(c) and (d). *See, In re Mid-State Raceway, Inc.*, 323 B.R. 40, 60-62 (Bankr. N.D.  
2 N.Y. 2005); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003).

3 **B. Use of Cash Collateral.**

4 11 U.S.C. § 363(c)(2) prohibits a debtor-in-possession from using, selling or leasing cash  
5 collateral<sup>3</sup> unless either (i) each entity that has an interest in such cash collateral consents or (ii) the  
6 court, after notice and hearing, authorizes such use, sale or lease. Debtor has an immediate need to  
7 fund prepetition payroll, employee benefits, lease obligations and additional critical operating  
8 expenses. Debtor seeks authority to use cash collateral existing as of the Petition Date, and collateral  
9 which becomes cash collateral during this Chapter 11 case, for the purposes of periodically repaying  
10 the Prepetition Senior Indebtedness, preserving and protecting its assets and otherwise maintaining  
11 its operations as a going concern pursuant to the DIP Budget. Pursuant to 11 U.S.C. § 363(c)(3),  
12 Debtor asks that the Court promptly authorize its immediate use of cash collateral on the terms set  
13 forth in the proposed Order filed herewith.

14 **1. Adequate Protection of Prepetition Lenders.**

15 In consideration for the use of their collateral and the priming of their prepetition liens, Debtor  
16 proposes granting Prepetition Lenders adequate protection in the form of (i) replacements liens in the  
17 Prepetition Collateral (the “***Replacement Liens***”) and (ii) an allowed administrative claim under 11  
18 U.S.C. § 507(b) (the “***Administrative Claim***”) to the extent the Replacement Liens do not adequately  
19 protect the diminution in value of the Prepetition Lenders’ interests in the Prepetition Collateral from  
20 the Petition Date. The Replacement Liens and the Administrative Claim shall be junior and  
21 subordinate only to any super-priority administrative claim ordered pursuant to 11 U.S.C. 364(c)(1),  
22 the Carveout, any Permitted Prior Liens and, to the extent payable, the Purchaser Break-up Fee and  
23 Expense Reimbursement.

24  
25 <sup>3</sup> “Cash collateral” is defined in 11 U.S.C. § 363(a) as generally meaning cash and cash equivalents  
26 in which the estate and an entity other than the estate have an interest, including the proceeds and  
products of property.

1  
2           **2.     Adequate Protection of Knott; Intercreditor Agreement.**

3           Pursuant to Section 2.7(a) of the Intercreditor Agreement, Knott (as successor-in-interest and  
4     “Junior Lender” under the Junior Lender Term Loan Agreement) has agreed that if Debtor becomes  
5     a party to a bankruptcy proceeding and moves for approval to use cash collateral or enter into  
6     postpetition financing to be provided by Prepetition Lenders (or any of them): (i) Knott will not  
7     object to Debtor’s use of cash collateral, (ii) Knott will not object to such postpetition financing so  
8     long as such financing, when combined with the Prepetition Senior Indebtedness does not exceed the  
9     “Cap Amount” set forth in the Intercreditor Agreement, (iii) Knott will not request adequate  
10    protection or any other relief in connection with any such financing (except under the circumstances  
11    permitted under the Intercreditor Agreement) and (iv) to the extent the liens securing the Prepetition  
12    Senior Indebtedness are subordinated or *pari passu* with liens securing such postpetition financing,  
13    the lien securing the Prepetition Junior Indebtedness will similarly be subordinated to the liens  
14    securing the postpetition financing on the same basis as the liens securing the Prepetition Junior  
15    Indebtedness are subordinated to the liens securing the Prepetition Senior Indebtedness.

16           The financing contemplated by the DIP Facility Agreement will not result in indebtedness  
17    exceeding the Cap Amount under the Intercreditor Agreement. Accordingly, the DIP Facility  
18    Agreement is permitted under the Intercreditor Agreement and Knott is not entitled to adequate  
19    protection for Debtor’s proposed use of cash collateral (except to the extent permitted under the  
20    Intercreditor Agreement) and may not validly object to Debtor obtaining credit under the proposed  
21    DIP Facility Agreement.

22           **3.     Adequate Protection of Purchase Money Security Interest Holders.**

23           As noted above, Debtor has entered into certain agreements with Manitowoc/Grove and DLL  
24    pursuant to which Manitowoc/Grove and/or DLL may claim that they were granted purchase money  
25    security interests in certain equipment purchased by Debtor and financed through DLL and/or  
26

1 Manitowoc/Grove and those security interests cover the proceeds of such equipment. Any issues  
2 with respect to the relative priority as between the liens and claims granted to the DIP Lenders or the  
3 Prepetition Lenders pursuant to this motion and the liens of Manitowoc/Grove and DLL are  
4 reserved.

## 5 VI. CONCLUSION

6 Pursuant to FRBP 4001(b)(2) and 4001(c)(2), a preliminary hearing on this motion is  
7 requested in order to avoid immediate and irreparable harm to Debtor's business and its bankruptcy  
8 estate. Debtor has immediate cash needs with regard to payroll, employee benefits, lease payments,  
9 and daily operational expenses which must be paid from cash collateral pending a final hearing.

10 Based on the foregoing, Debtor requests that the Court enter an Interim Order in the form  
11 submitted herewith approving the DIP Facility Agreement and authorizing Debtor's use of cash  
12 collateral pending the final hearing (which Debtor requests that the Court note for October 8, 2010 in  
13 conjunction with Debtor's motion to approve its proposed bid and sale procedures) and, at the final  
14 hearing, enter an order authorizing the relief requested on a final basis.

15 DATED this 22<sup>nd</sup> day of September, 2010.

16  
17 K&L GATES, LLP

18  
19 By /s/ Michael J. Gearin  
20 Michael J. Gearin, WSBA # 20982  
21 David C. Neu, WSBA # 33143  
22 Brian L. Lewis, WSBA # 33560  
23 Attorneys for Coast Crane Company  
24  
25  
26